The Problem with Probation:

A Study of The Economic and Racial Impact of Probation Fees in California

By Tara Gamboa-Eastman
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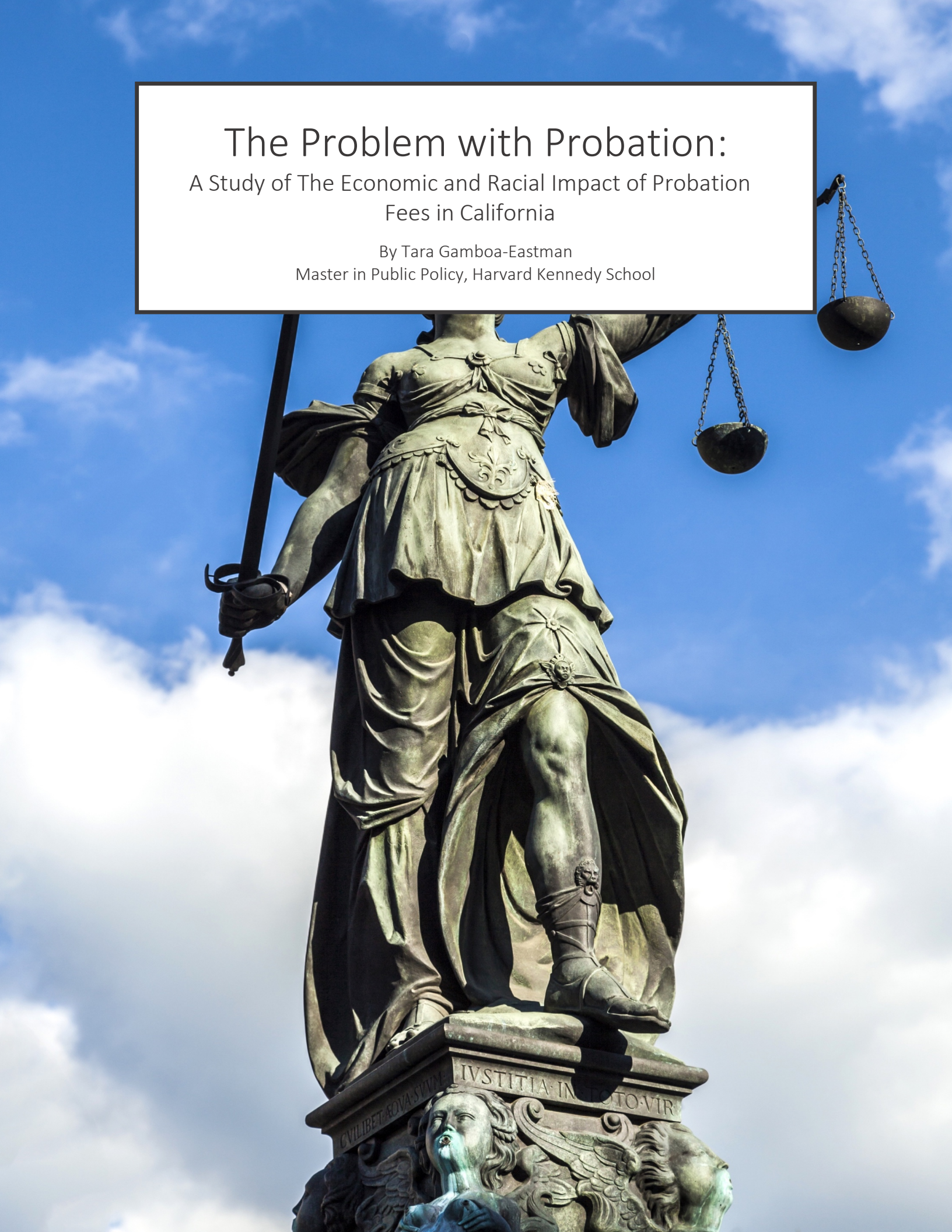

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This PAE reflects the view of the author, and should not be viewed as representing the views of the PAE's external client(s), nor those of Harvard University or any of its faculty.

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Executive Summary

The Problem: Little Known About How Probation Fees are Implemented

California's "tough on crime" doctrine of the last forty years left the state with two problems: a criminal justice system that imprisoned more people than any other state[1] and no way to pay for the profound costs of mass incarceration. The state attempted to solve this problem by charging defendants for their so-called "use" of the system. Today, defendants are charged dozens of fees as they move through the criminal justice system—including probation fees.

California allows the state's 58 county probation departments to charge people for the cost of probation. However, without statewide standards, guidelines, or oversight, there is little information about how counties are implementing these fees.

While researchers, advocates, and legislators, alike, often raise the detrimental effect of criminal justice fees on a population primarily made up of low-income people of color, little specific attention has been paid to the harmful practice of probation fees. With more than 60 percent of the state's criminal justice impacted population on probation,[2] California cannot ignore the injustice of probation fees. Nor can the practice be reformed without knowledge of how counties are implementing fees on-the-ground.

Findings: Fees are Failing People on Probation and County Governments

To illustrate how probation fees work in counties across California, Public Records Act (PRA) requests were sent to all 58 county probation departments. Eighty percent of counties responded, representing nearly 95 percent of California's total population.

Responses show that most counties do not track collection rates, suggesting that the fees are of little consequence to county budgets. Those that did track collection rates reveal low collection rates and high costs of collection, fees contribute little

Even if these fees brought in revenue, they are not worth the profound costs to people on probation. Responses highlight tremendous variation in implementation across the state, but even where individual fees are small, debt adds up quickly. The average debt burden for just the three most common fees is more than $3,600, alone. While probation departments are required to consider people's ability to pay these fees and adjust them accordingly, this rarely happens. The result is steep debt with steeper consequences.

Recommendations: Elminate Probation Fees, Wipe Out Existing Debt

Without evidence that probation fees support county budgets, fees that magnify the unambiguously racist and classist practices of the criminal justice system cannot be justified. Local policymakers should evaluate county fee practices and consider eliminating existing probation fees and rendering the debt unenforceable and uncollectable. State policy makers should consider legislation that would amend penal code to eliminate probation fees and prevent the collection of previously assessed fees.

Background

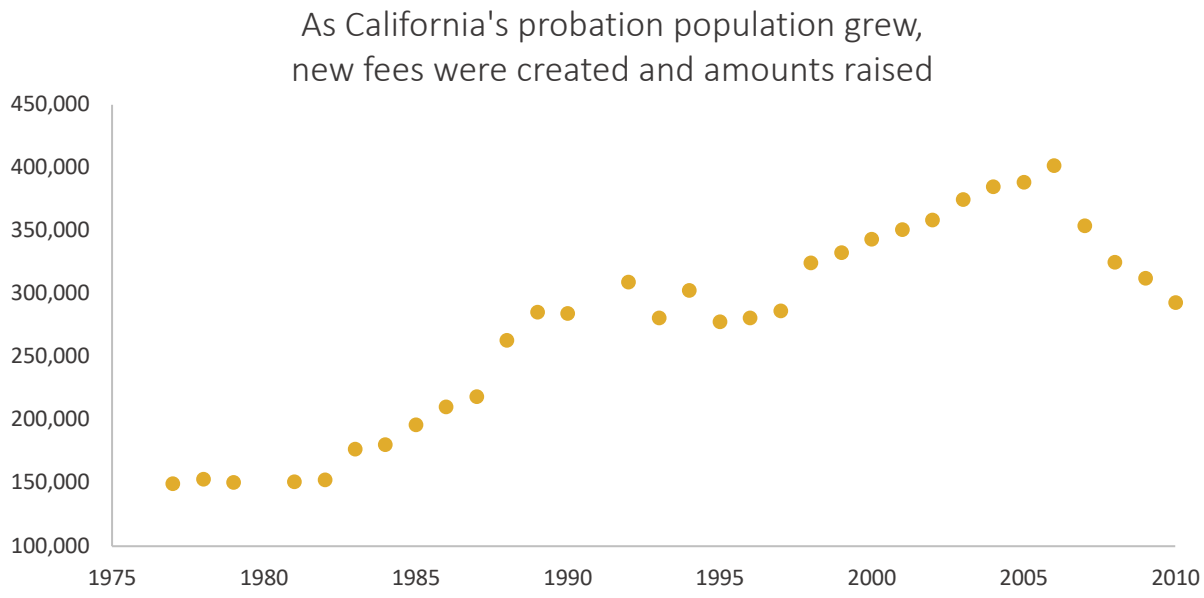
The Rise of Probation Fees: Budgeting in the era of mass incarceration

Between 1980 and 2010, California's "tough on crime" doctrine included the aggressive and systematic incarceration of people of color.[3] The result was a more than 500 percent surge in the state's prison population.[4] With the system bursting at the seams, state and local budgets were similarly stretched beyond their limits.

Cash-strapped and facing the unprecedented expansion of the criminal justice system, state and local governments turned to criminal justice fees to prevent budget shortfalls.[5] The defense of these fees was simple: those "using" the system should pay for the system. Unlike fines, whose purpose is to punish, and restitution, whose purpose is to compensate victims, these fees were explicitly intended to raise revenue[6] and were used to justify state spending on the surges in arrests, imprisonment, and surveillance in the era of mass incarceration.

Criminal justice fees were an instant hit among policymakers and taxpayers, alike. They allowed "tough on crime" policies to continue while reducing, at least in theory, the financial burden on the public. On top of providing budgetary relief, fees were also sold as a way to build personal responsibility among defendants by requiring them to (quite literally) pay their debt to society.[7]

While this dynamic (an exploding population, financial constraints, and the rise of fees) existed throughout California's criminal justice system, it was particularly pronounced in probation. In 1980, at the very start of the "tough on crime" period, California introduced probation fees with the creation of Penal Code 1203.1b (which remains the primary authorizing statute of probation fees). As the probation population continued to rise, so did fees.



Probation fees did not just grow with the population. California probation departments faced, and continue to face, structural challenges distinct from the rest of the criminal justice system. Probation departments supervise the most people but receive the lowest funding compared to other parts of the criminal justice system (i.e., jail and prison). Across the country, parole and probation typically receive less than 10 percent of state and local government corrections expenditures, but also consistently supervise the majority of the criminal justice impacted population.[8] This systemic underfunding is especially true in California. In 1994, at the heart of the "tough on crime" era, California probation departments supervised the vast majority of the state's criminal justice impacted population (59 percent),[9] but received the lowest percentage of state funding allocation of any other probation system in the country.[10]

With budget shortages and high caseloads, probation fees were an easy fix that allowed the government to continue the unjust practices of the mass incarceration era.

The Realignment Burden: Mass incarceration to community supervision

The financial and supervisorial strain on California probation only continued to grow. Decades of "tough on crime" policies resulted in unprecedented levels of incarceration. In 2011, the Supreme Court ruled that, due to severe overcrowding, California was violating inmates' constitutional protection from cruel and unusual punishment and that it had to swiftly and dramatically reduce its prison population.[11] In response, California passed the Public Safety Realignment Act (Realignment), shifting responsibility for tens of thousands of low-level offenders from state prisons to county supervision[12] and putting probation at the "epicenter" of reform.[13]

Under Realignment, in exchange for playing an even more significant role in corrections, probation finally received additional state funding.[14] Across the state, probation received 34 percent of all allocated first-year Realignment money, [15] but the amount that individual probation departments received varied dramatically by county.[16] Realignment allows counties to determine how to divide funds among community corrections (i.e., jails, probation, and social services).[17] As a result, some counties have heavily invested in probation while others have used their Realignment dollars to build more jails—merely shifting mass incarceration from the state to the local level.[18]

Even in counties where probation received an influx of cash, the speed with which Realignment was implemented, intensifying already rising caseloads, has continued to stretch probation departments beyond their capacity.[19] As the pressure on probation continues to grow, so may the pressure to rely on fees.

Rethinking the Use of Fees: Research highlights their detrimental impact

When criminal justice fees came to prominence, the government sold them as a win-win. The government and taxpayers purportedly got to save money, while fees would instill a sense of personal responsibility among defendants. In reality, research shows that governments are making less than they think and doing so at the expense of those in the criminal justice system.

Governments Have Misrepresented the Revenue Raising Success of Criminal Justice Fees

While the stated motivation behind criminal justice fees is to cover the cost of administering services, fees fail to do so. According to the Brennan Center for Justice, as governments increasingly rely on fee revenue, they only consider the money they are bringing in and ignore the cost of debt collection. Looking only at income fails to account for the many expenses associated with debt collection, painting a false picture of budgetary success.[20]

Criminal Justice Fees Have Devastating Effects on an Already Vulnerable Population

The more concerning finding from recent literature is that these fees create high levels of debt, come with high penalties, and are primarily levied against low-income people of color—exacerbating racial disparities in the criminal justice system and throughout society. Across jurisdictions and fee types, research shows that while individual fees may appear small, they quickly add up to hundreds or even thousands of dollars.[21] Inability to pay can lead to additional penalty fees and interest, creating insurmountable debts; lower credit scores, affecting one's ability to secure housing and employment; and even re-incarceration.[22]

Additionally, the reality is that those least likely to be able to afford fees are the most likely to be charged them, worsening the injustice of fees, penalties, and the criminal justice system as a whole. Research from the Prison Policy Initiative shows that, before incarceration, the median income for someone in prison was 41 percent less than their non-incarcerated counterparts.[23]

While the criminal justice impacted population, as a whole, is far poorer than the general population, it is also important to acknowledge how criminal justice fees compound the growing race-wealth divide. Economic, housing, and criminal justice policies, among others, have jointly devastated communities of color resulting massive disparities in wealth.[24] As of 2016, the average white family had seven and five times more wealth than the average black and Latino family, respectively.[25] For its part, the criminal justice system has contributed by taking generations of black and Latino people out of the labor market, making them unemployable post-release, stripping their access to public benefits,[26] and saddling them with debt via criminal justice fees.

The idea that those in the criminal justice system can pay criminal justice fees is fundamentally flawed. Penalties that add to existing debt only double down on an unsound and unjust approach.

County Probation Fees: Little is known about how fees are implemented

While existing research highlights concerning trends in criminal justice fees throughout the system, there are few studies on probation fees in particular. Notably, a lack of data complicates research into probation fees. In California, counties administer probation, and state law allows unchecked county control in setting, assessing, and collecting fees without any reporting requirements.[27] As a result, there is no information on how counties implement probation fees.

If the patterns found throughout the criminal justice system hold for California probation, reform cannot afford to wait. As pressure on county probation departments continues to mount, so will the pressure to lean on fees. To adequately address any problems within probation, however, detailed information about how counties are implementing these fees is needed.

Methodology

Understanding Probation Fees: Employing California's Public Records Act

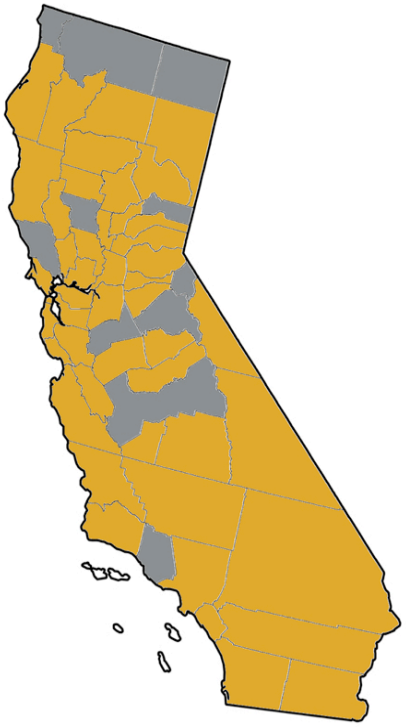
The foundation of this report is a series of public records requests sent to California probation departments. Modeled after the Freedom of Information Act, the California Public Records Act (PRA) allows members of the public to request documents from state and local departments.

The Public Records Act requests were composed in collaboration with three community organizations that work with people on probation, including Los Angeles Regional Reentry Partnership, Rise Together Bay Area, and Root & Rebound. Based on their input, the Public Records Act requests asked for all documents related to probation demographics, fees charged, practices surrounding probation fees, and the role of private companies.

In June 2017, public record requests were sent to all 58 county superior courts and probation departments and were collected through the end of November of the same year. Preliminary analysis of responses showed that probation responses contained much more salient information for the scope of this report and had a significantly higher response rate compared to the courts. Therefore, this report only draws on the responses from probation departments.

Forty-seven out of 58 county probation departments, or 81 percent, sent responsive documents. These counties represent nearly 95 percent of the total California population and are statistically representative of the state on measures of gender, race, and socioeconomic status.[1]

81% of county probation departments responded to the PRA request



Limitations: Lack of data, consistency, and interviews

The Public Records Act does not require that departments create new documents, only that they share any existing and responsive documents. As a result, not all counties responded to each portion of the request, with comparable information, or in the same format. Given these limitations, it is difficult to draw definitive conclusions about trends across the state.

Additionally, information collected through the PRA request only provide the formal rules surrounding probation fees. While a limited number of interviews with Chief Probation Officers and people formerly on probation were conducted, there were too few to fully understand how counties are implementing probation fees beyond what was provided in the PRA responses.

[1] Additional information, including statistical testing of demographic representation, can be found in Appendix C.

Findings

Throughout the "tough on crime" era and into today, state and local governments have endorsed probation fees saying that they would raise revenue and promote rehabilitation by building a sense of personal responsibility among probationers. The results of the Public Records Act requests, however, show that probation fees fall short on both counts. The revenue that counties generate from probation fees is negligible, at best. At worst, counties may even be losing money. Even more alarming is how the burden of probation fees impacts low-income probationers and sets them up for failure rather than contributing to rehabilitation.

Finding 1 – Probation Budgets: The myth of profitability has fostered bad policy

Probation department budgets show low collection rates and high costs of collections. Gross revenue typically represents 1 percent of total probation department budgets. After factoring in the cost of collections, revenue is even lower and may also put counties in the red. Failure to examine the actual costs of these fees has stunted government's ability to create a sustainable solution to probation's persistent budget shortages.

Finding 2 – Local Practices: Vary greatly, little oversight leaves impact difficult to track

The lack of state guidelines and oversight has led to tremendous variation in probation fees. With no statewide repository of the fees and their impact, statewide policymaking to address the unevenness and the impact of fees has been muted.

Finding 3 – Probation Fees: Numerous, high, create an unreasonable debt burden

Regardless of how small an individual fee is, the cumulative effect of dozens of fees leaves people with insurmountable levels of debt. The average cost of the most common fees over the course of probation totals to more than $3,600. The burden of the fees is too high to support their use.

Finding 4 – Ability to Pay: Rarely taken into account, setting people up for failure

State law requires that probation departments conduct ability to pay proceedings to determine if a person on probation has the financial resources to pay their fees. In practice, ability to pay proceedings rarely happen and when conducted, are seldom in accordance with the law, so provide little relief to low-income people on probation.

Finding 5 – Steep Penalties: Push people deeper into poverty

Expensive fees assessed with disregard for ability to pay sets people up to fail and, when they inevitably do, they face incredibly harsh penalties. Failure to pay can result in a violation, extension, or revocation of probation. Even less punitive consequences, such as penalty fees can leave low-income people on probation unable to make ends meet, undermining rehabilitation.

Astronomical fees levied without consideration of ability to pay and accompanied by severe consequences have profound and devastating repercussions for low-income people on probation – dwarfing any concerns of revenue generation. The fact that they are harmful and inefficient begs the question: why do counties continue to charge probation fees at all?

Probation Budgets: The myth of profitability has fostered bad policy

Since their establishment, state and local governments have touted fees as the magic bullet for the criminal justice system's financial woes. Evidence from the PRA requests, however, shows that probation fees generate little if any revenue. Neglecting to adequately consider the costs of probation fees has allowed bad policy to become the statewide norm.

Gross revenue from probation fees, on average, represents just over 1 percent of probation departments' total budgets. Low returns are mainly due to counties charging these fees to a population that cannot afford them. As a result, probation departments have incredibly low collections rates. The typical collection rate hovers between 20 and 35 percent. In Alameda County, the probation department collects less than 1 percent of what it assesses.

Even in counties with higher rates of collection, fees contribute little to probation department budgets. For instance, Alameda and Sacramento County Probation assessed similar amounts in probation fees, but Sacramento had a dramatically higher rate and an absolute value of collections. Nonetheless, Sacramento's gross revenue still made up less than 2 percent of the probation department's total annual budget. Even if counties had a 100 percent collection rate, gross fee revenue would account for less than 10 percent of most probation department budgets.

Low Returns Mean Fees Contribute Little to Probation Department Budgets						
County	Probation Department Budget[28]	Amount Assessed	Amount Collected	Collection Rate	Gross Budget Share	County Population[29] *(Thousands)*
Alameda *(Avg. FY 12/13, 13/14)*	$82,735,105	$7,912,488	$48,423.02	0.61%	0.06%	1,510
Kern *(Avg. FY 12/13 – 16/17)*	$84,061,723	$2,695,155	$807,023	29.94%	0.96%	839
Sacramento *(FY 16/17)*	$141,000,000	$7,081,032	$2,408,706	34.02%	1.71%	1,514
Tulare *(Avg. FY 12/13 – 16/17)*	$29,068,929	$1,975,710	$383,912	19.43%	1.32%	63

Net revenue is even lower when you consider the cost of collections. Depending on county size and the aggressiveness of collection policies, counties are spending between tens of thousands and millions of dollars a year attempting to collect probation fees, eating into the already marginal profits and possibly putting counties into the red.[2]

[2] A table representing the cost of collections by county can be found in Appendix D.

Existing Research Suggests PRA Response is the Norm

While these figures represent a limited number counties and should not be expected to represent the state as a whole, they do suggest that trends seen across the criminal justice system hold true in the probation fee context. The White House Council of Economic Advisors found that, nationally, state and local governments are likely to collect these fees at low rates, due in large part to the low incomes among many offenders, making them an ineffective and inefficient means of raising revenue.[30] In California, recent research from UC Berkeley on juvenile fees found similar results to those here, suggesting that this pattern makes sense in a California-specific context.[31]

Many criminal justice fee experts believe that the governments should also consider the costs of incarceration and recidivism when tabulating the costs of implementing fees. Research from Brennan Center for Justice notes the additional costs of arresting and incarcerating people for being unable to pay.[32] Additionally, the UC Berkeley study on juvenile justice fees indicates that the negative economic impact of fees on people re-entering the community increases the likelihood of recidivism, thereby increasing the cumulative costs of the criminal justice system.[33]

County Budget Structures May Be Obscuring the True Costs of Probation Fees

While there are likely a variety of reasons, intentional and unintentional, that counties are ignoring this fiscal imbalance, one may be due to the county collections structure. In some counties, probation department collect probation fees directly, in others the courts, county collections, or some combination of all three are responsible for collecting probation fees. In cases where probation departments assess the fees but are not responsible for collection they are isolated from the costs and only see the benefits. For example, in San Francisco where probation does not collect fees, Chief Probation Officer Karen Fletcher said that the revenue brought in by fees was thought to be invaluable, but the cost of collections was not at all considered.[34] The collection structure does not change the ultimate costs and benefits, but it highlights the importance of considering accounting concerns at the county-level.

Failing to Account for Costs is Unsustainable for Counties and People on Probation

Regardless of why counties have been unable to look at the costs associated with probation fees, by doing so, they have misrepresented their benefit. Operating under this pretense means that state and local governments are not addressing the causes of persistent probation budget shortages and underfunding.

While it should be concerning that probation fees are not raising revenue – their purported goal – merely making these fees more profitable is not the solution. As can be seen in the other four findings, the profound and negative impact that these fees have on people on probation means that they are unjustifiable regardless of how much money they could potentially bring a county.

Local Practices: Vary greatly, little oversight leaves impact hard to track

California Penal Code 1203.1b, the primary statute that governs probation fees, gives counties broad authority to set probation fees. Under Penal Code 1203.1b, counties may charge defendants for the reasonable cost of any probation supervision. This statute enumerates three specific fees: fees related to the cost of any pre-plea or pre-sentence investigation or report, the cost of processing a jurisdictional transfer, and the cost of collection for installment payments. Even among the fees that are explicitly listed, only installment fees have a cap (counties may not charge more than $75). For all other fees, both listed and unlisted, the only stipulation is that the fees must be "reasonable" and not exceed the "actual average cost."[35] The open-ended language of Penal Code 1203.1b leaves much up to interpretation and without reporting requirements, there is no information about what the impact of these fees is across the state.

Results from the Public Records Act requests show that the vague language of 1203.1b has resulted in vast differences in how much counties charge and for what. The sweeping differences in fees across the state for the same services suggest that counties may be charging more than the average cost, thereby violating Penal Code 1203.1b. Regardless of the legality, it is intolerable that fee discrepancies across counties create different standards of justice based solely on where people happen to be on probation.

Counties Charge for an Array of Services

The Public Records Act requests uncovered nearly two dozen fees that probation departments charge. Some fees are charged by a majority of counties, such as supervision fees which are charged by 83 percent of all counties that shared their fee schedules. Conversely, some are only charged by three or five counties.[3] For probationers, this means that even before the amount of each fee is considered, people have different debt burdens based only on location.

Inconsistency in How Much Counties Charge Even for the Same Services

Even among the three most widely charged fees (supervision, pre-sentence report, and drug test fees), there is a wide range of actual fee amounts. Across supervision, pre-sentence report and drug test fees, the highest fees are 14, 100 and 10 times higher than the lowest, respectively. Charging 100 times more than another county for the same service is unconscionable.

Immense Difference in Fee Amounts Across Even Standard Probation Fees

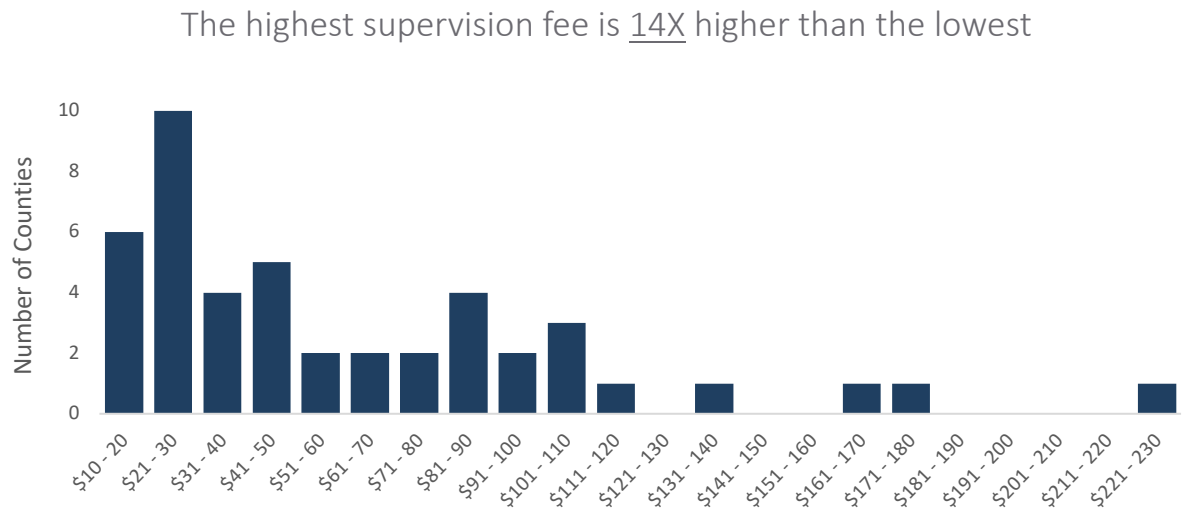
Type of Fee	Average	Median	Range
Supervision Fee Per Month *(PC 1203.1b)*	$64	$50	$16 - $223
Pre-Sentence Report Fee Per Report *(1203.1b)*	$597	$450	$25 - $2,622
Drug/Alcohol Testing Fee Per Test *(1203.1ab)*	$19.55	$20	$5 - $50

[3] A complete list of probation fees, including how many counties charge each fee, can be found in Appendix E.

Even more concerning than simply the broad range is the nature of the distribution. In each case, the majority of counties cluster around similar amounts on the lower end of the cost spectrum. But then there are a handful of outlier counties that charge exponentially higher fees without any justification for the inflation. These distributions suggest that some counties are taking advantage of the vague statutory language.[4]

Example: The Impact and Implications of Supervision Fee Variability

Supervision fees are the most widely charged fee and broadly cover the cost of providing probation, which primarily includes probation officers' salaried time. While it may be the most common fee, the amount varies quite broadly, ranging from under $20 to more than $200 per month.



Comparing San Francisco and Lassen counties puts the significance of this broad range in context. San Francisco's monthly fee sits precisely on the median at $50 per month. According to research completed by Donna Mandel, a Legislative Policy Analyst with the San Francisco Office of the Public Defender, the monthly probation supervision fee in San Francisco imposed a higher amount of debt on individuals than any other criminal justice fee in the county.[36] If a $50 a month fee produces the amount of debt in San Francisco, the impact supervision fees must have on people in Lassen County where the monthly supervision fee is $223 – more than four times what San Francisco charges – is, no doubt, astronomical.

Moreover, with supervision fees, where the primary costs are salaires, fees should be higher where the cost of living is higher. If anything, supervision fees should be higher in San Francisco where the living wage is 75 percent higher than in Lassen.[37] The fact that Lassen's supervision fee is higher than San Francisco emphasizes that the language of Penal Code 1203.1b does not establish strong enough standards to ensure equitable treatment across the state.

[4] Distributions for Pre-Sentence Report and Drug Testing fees are in Appendix F and Appendix G, respectively.

Probation Fees: Numerous, high, create an unreasonable debt burden

Public Record Act responses uncovered nearly two dozen fees charged by probation departments.[5] Some cost less than $5 while others run into the thousands. Although all fees have a disproportionate impact on low-income people, in a cruel twist, some fees are specifically designed to punish the poor simply for being poor. Fees for setting up an installment plan and penalty fees for having insufficient bank funds acknowledge that many people cannot afford these fees, but punish them for their inability to pay just the same. The result is an insurmountable debt burden for the majority of people on probation.

Common Probation Fees Add Up to Thousands of Dollars for the Average Person

The three most widely charged probation fees are for supervision, pre-sentence investigations and reports, and drug testing. The average cost of just these three fees over the course of probation results in more than $3,600 of debt.[6] When additional probation fees, restitution, fines, as well as other criminal justice fees are tacked onto this already enormous amount, it can grow exponentially higher. Though most Americans don't have enough savings to cover a $1,000 emergency,[38] probation departments routinely and without question impose thousands of dollars in fees on a population that is overwhelmingly low-income.

High Fee Averages Create an Unreasonable Debt Burden			
Type of Fee	**Average**	**Median**	**Range**
Supervision Fee Per Month *(PC 1203.1b)*	$64	$50	$16 - $223
Pre-Sentence Report Fee Per Report *(1203.1b)*	$597	$450	$25 - $2,622
Drug/Alcohol Testing Fee Per Test *(1203.1ab)*	$19.55	$20	$5 - $50

The gravity of this debt comes into even sharper focus when considering the circumstances under which these fees are charged. While pre-sentence investigation report fees are relatively straightforward (a universal fee for felony charges), the context of supervision and drug testing fees highlight the unfair debt burden they create.

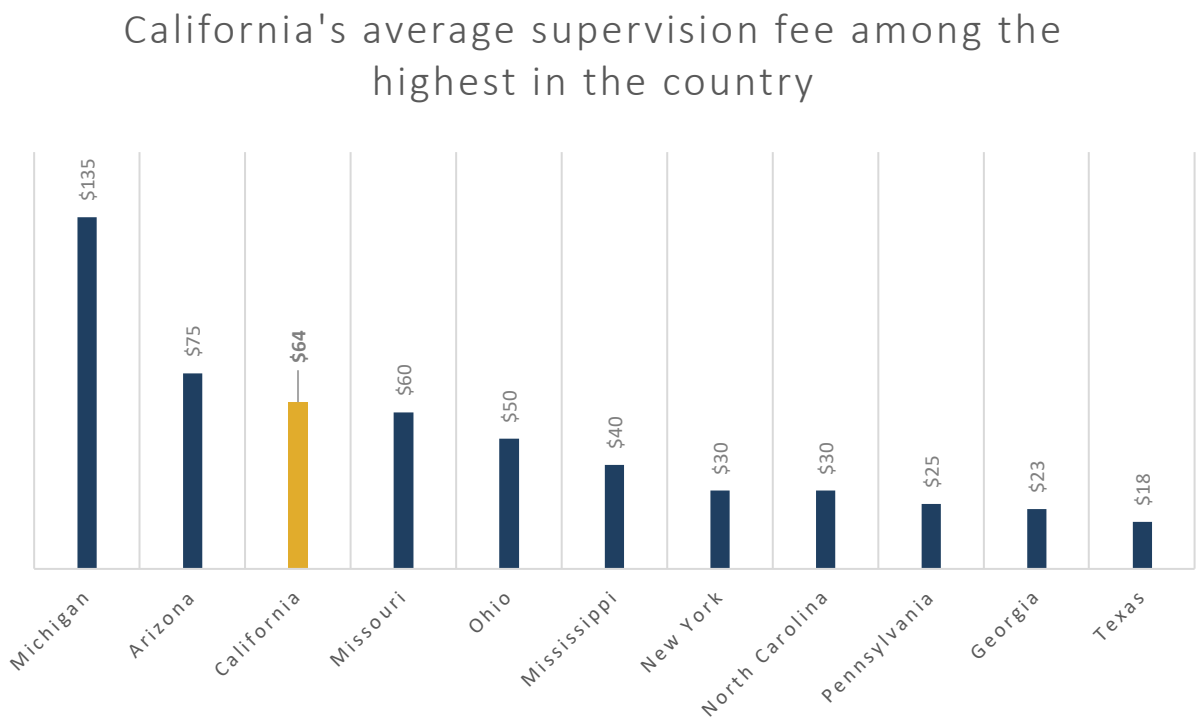
[5] A complete list of all fees uncovered through the Public Records Act responses can be found in Appendix E.

[6] This total was calculated using a three-year average probation term with monthly drug tests. Three years is the average probation length in San Francisco. While average probation length was asked for in the PRA requests, too few counties responded to calculate an accurate average across the state. The frequency of drug tests is similarly unknown. Neither PC 1203.1ab nor PC 1203.1b stipulate how often a person on probation may be required to submit to drug testing. In Imperial County, the only county to share data on drug testing frequency included ranges from multiple times per week, once every six weeks, or twice a year.

Supervision Fees in Context: CA's High Cost of Supervision and the Burden of Paying Up Front

The high cost of supervision fees, both on their own and in conjunction with other probation fees, is even more pronounced when the national context as well as when and how they are collected are considered.

While the standard cost of probation fees around the country is difficult to track, limited data suggest that California counties charge some of the highest supervision fees in the United States. A Brennan Center for Justice report identified the probation supervision fees in ten states.[39] Compared to these ten states, California's average supervision fee is among the highest – higher than fees charged in some of the most conservative states in the country, including Missouri, Mississippi, Alabama, North Carolina, Georgia, and Texas.[40] Furthermore, looking beyond the average to the range of supervision fees, many counties, such as Lassen, are charging higher fees than can be seen anywhere else in the country.



Not only are California's monthly supervision fees incredibly high, but are often charged up front making them that much more oppressive. Although counties universally described supervision fees as monthly fees, some counties (including San Francisco, Sutter, and El Dorado) are charging people supervision fees in a lump sum, up front. In San Francisco where the monthly supervision fee is $50, and the average length of probation is three years, people on probation are charged $1,800 at the start of probation.[41] For many, paying $1,800 plus pre-sentence report fees, other fees, fines, and restitution is merely out of the question. This unnecessary and perplexing policy imposes an unbelievably high debt burden on people on probation.

Drug Testing Fees in Context: A Lack of Regulation Has Led to High Debt with a Broad Impact

The statute that governs drug testing on probation fails to specify limitations on frequency of testing, which has the potential to lead to astronomical levels of debt. Moreover, the law is being improperly implemented to unjustly require more people to undergo drug testing and pay the associated fees.

The fee structure for drug testing fees varies from flat monthly and annual fees to a fee per test. Some counties charge monthly ($29 per month in Mendocino County) or annual fees ($60 - $150 per year). However, most counties charge fees per test, which typically cost $20. In the case of per test fees, how much an individual owes depends on how often they are tested. It remains unclear whether there are any restrictions on how often a person can be tested. Penal Code 1203.1ab, which allows people on probation who have been convicted of a drug crime to be required to comply with drug testing and to pay the associated costs as a condition of probation, does not specify any limits on testing frequency.[42] As a result, counties can charge these fees as often as they like, leading to the potentially quick and excessive accumulation of debt.

Imperial County: How Drug Testing Frequency Impacts Debt Accumulation

In Imperial County, individuals pay $7 per test, far lower than the average California drug testing fee. There are three levels of supervision standards with three levels of drug testing: (1) Intensive Supervision Standards, (2) Regular Supervision Standards, and (3) Minimum Supervision Standards. Those on regular and minimum supervision must only take and pay for tests twice per quarter and once every six months, respectively. On intensive supervision, however, individuals have to submit and pay for drug testing three times per week. This lasts for at least six months, over which time people on intensive supervision will accrue $576 in drug testing fees, alone. In 2017, intensive testing requirements applied to nearly a third of all people on felony probation in Imperial County.

Additionally, drug testing fees are different from many other probation fees, including supervision and pre-sentence report fees, because they are not intended to apply to all people on probation. Under California state law (PC 1203.1ab), only those whose conviction has a nexus to drugs can be required to submit to drug testing.[43] In practice, however, many more people than just those convicted of drug crimes are being required to submit to drug testing.

The first and more optimistic reason that drug testing is used so widely is that courts and probation departments are modifying their use of drug testing to help those genuinely affected by drug abuse. San Francisco Chief Probation Officer Karen Fletcher says that her department will often recommend drug testing based on use rather than the crime. For instance, many drug dealers have no history of personal drug use.[44] While the law may require mandatory drug testing for these individuals, probation officers will often recommend that the courts waive this requirement.[45] On the other hand, individuals who are not convicted of a drug crime, but whose

criminal behavior is influenced by their drug use may be recommended to comply with mandatory drug testing as a condition of probation.[46]

The second, more pessimistic and more likely explanation given the history of California's criminal justice system, is that probation departments are expanding the definition of a "drug crime" to impose greater punishments on more people. According to David Muhammad, former Chief Probation Officer for Alameda County, in practice the nexus between crime and punishment is often quite weak. To be required to comply with drug testing the connection can be as tangential as committing a crime in a "drug neighborhood."[47] Brandon Greene with the East Bay Community Law Center points out the significance of this trend, saying:

> *The nexus of crime and punishment is inescapable for folks who exist and live in areas so inherently criminalized as to taint the whole neighborhood. The state can extract money (fees), labor (community service), and information (surveillance, DNA) from folks so long as they come from crime-ridden neighborhoods, which police ensure they do, by hassling and arresting them and all of their loved ones.*[48]

Counties operating beyond the intention of the law, subjecting more people to drug testing and then demanding they pay for their unjust treatment is unconscionable – especially considering how quickly these fees add up.

Fees Especially Punish People Who Are Poor

While all fees disproportionately impact low-income people, two probation fees specifically target them: (1) installment collections fees and (2) returned check fees.

First, collections fees are intended to cover the costs of collecting and processing fine and fee payments. Some counties charge a single collections fee while others charge separate fees for installment and non-installment collections. Installment collection is when people on probation make partial payments until they pay off the total debt. Conversely, non-installment collection is where people on probation pay the entire debt at once. Except in Mendocino, in every county that charges separate fees for both types of collection, installment fees are higher than non-installment fees. This difference in fee amounts means that if a person on probation cannot pay their debt in a lump sum and up front, they are punished with higher fees.

Second, returned check fees tack on additional penalties for people who attempted to pay their probation fees, but whose check cannot be processed due to insufficient funds.[7]

In both cases, these fees punish people's inability to pay with even more and higher fees only exacerbating the problem of inability to pay.

[7] A table displaying returned check fee amounts by county can be found in Appendix H.

Ability to Pay: Not taken into account, setting people up for failure

California Penal Code 1203.1b, the same statute that authorizes probation fees requires that probation officers conduct an assessment of ability to pay for all probationers. While the results of the public records requests show that probation departments do have official policies stating that fees will be determined by an individual's ability to pay, in reality, this protection is mired in a complicated, burdensome process that is rarely used.

Ability to Pay Proceedings May Not be Happening or Providing Enough Relief

The foundation of nearly all counties' ability to pay determinations is a financial assessment form. Here, probationers fill out standard financial information such as income, assets, eligibility for welfare, and household size and then are asked to attach supplementary information such as tax returns, pay stubs, and bank statements.

While the mechanisms exist, it is unclear if they are providing any relief for low-income people on probation. First and foremost, ability to pay determinations may not be happening. David Muhammad, former Chief Probation Officer of Alameda County, shared that the Alameda County Probation Department did not conduct ability to pay assessments for administrative fees.[49] Given the limited number of interviews conducted it is difficult to tell, but likely that this is also happening in other counties.

Even in counties where probation departments do conduct ability to pay determinations, it seems as though they are not resulting in appropriate adjustments. In Tulare County between fiscal years 2012-2013 and 2016-2017, the probation department made no ability to pay reductions. With 80 percent of all defendants in California considered indigent,[50] it is hard to believe that no one who was given a payment plan during these five years would have needed a reduction in fees. Additionally, in Kern County, probation departments accommodate individuals' ability to pay through the use of a sliding scale, but even the minimum payment is quite high for those living in poverty. For example, a probationer with a household of 2 to 10 people making between $0 and $1,000 per month still has to pay $45. If probation departments are not conducting ability to pay determinations they are operating outside of the law or if they are, but failing to make appropriate adjustments, they are still violating the spirit of the law.

Heavy Burden to Have Ability to Pay Considered

Part of the reason that ability to pay proceedings may not be happening or may not be successful in ensuring low-income people receive appropriate accommodations, is that much of the administrative burden is left up to people on probation. For example, in San Francisco policies and procedures dictate that "if it will be a hardship for the defendant to pay fines and penalties, he or she must contact the [County Collections Unit] to inquire about options." Additionally, notices from Placer County Administrative Services Department Revenue Service Division say that if probationers do not supply their financial evaluation and supporting documents in a promptly, "[they] may give up [their] right to a financial evaluation." Putting the onus on individuals on probation means that many people are likely unaware of their rights and are, thus, missing out on desperately needed ability to pay accommodations.

Probationers also have to update their financial information regularly. For example, in Trinity County, every 90 days probationers have to submit:

- A completed financial declaration;
- A copy of last year's tax return;
- Documentation of income from all people in the household;
- Proof of cash aid, unemployment, disability, food stamps/CalFresh, and child support;
- Rental agreement or mortgage statement;
- Documents for any real estate owned and a fair market value of the property;
- Copies of the last two monthly bank account statements;
- A copy of the last two utility and phone bills; and
- Proof of child support payments made.

Much of this information is unlikely to change over the course of 90 days, and such heavy requirements disproportionately impact low-income people who are in the greatest need of ability to pay adjustments. As Theresa Zhen with the East Bay Community Law Center points out, burdensome requirements are particularly hard on people who are transient or homeless who often have difficulty maintaining documents.[51]

Bureaucratic and burdensome procedures undermine the fairness that ability to pay is meant to uphold and undoubtedly reduce the number of people who benefit.

PRA Results Paint a Worrying, but Incomplete Picture of the Problems with Ability to Pay

While the results of the Public Records Act requests begin to paint a picture of the problems surrounding ability to pay determinations, this is likely only the tip of the iceberg. Policies and procedures for determining ability to pay as well as the number of probationers that had the amount of probation fines and fees reduced or a payment plan established due to their inability to pay were requested. Even so, probation departments turned over very few responsive documents, suggesting that counties do not have a sense of how ability to pay is being used. Without statewide data that allows for evaluation of how often ability to pay protections are invoked it is impossible to know whether disparities exist between counties or the impact that these policies have on protected classes.

Steep Penalties: Push people deeper into poverty

From start to finish, the practice of charging probation fees is designed to punish poverty. Probation departments levy unreasonable amounts of debt against a population known to be largely low-income and then fail to consider their ability to pay. When insurmountable levels of debt inevitably lead to a failure to pay, probation departments punish individuals with harsh penalties that push them into deeper poverty.

Public Records Act responses show that failure to pay penalties and even debt collection practices are incredibly harsh, often causing further financial distress among people on probation. Moreover, both penalties and debt collection practices are accompanied by consequences that can impact individuals' financial stability.

Doubling Down on Debt with Poverty Penalties

Poverty penalties[52] are among the top strategies to punish failure to pay and include penalty fees as well as interest. Poverty penalties double-down on the flawed notion that individuals on probation can afford to pay fees, driving low-income people further into debt.

As people's debt continues to rise from additional fees and interest, they can face the additional consequence of poor credit. A limited number of counties reported in their Public Records Act responses that unpaid debt may impact an individual's credit score. Many employers and landlords use credit as a screening tool. As a result, poor credit can prevent people from securing work and housing, only further damaging their financial security.[53]

Some Counties May Violate, Extend, or Revoke Probation Due to Failure to Pay

Some counties may find people in violation of probation and extend or revoke probation if they fail to pay their fees. Public Record Act responses show that Imperial, Sutter, Tehama, and Trinity counties list these as possible consequences. It is illegal to revoke probation when a person who fails to pay does so due to an inability to pay.[54] Due to weak ability to pay provisions, however, many people who should be getting reductions or payment plans do not. Failure to consider ability to pay may put some individuals at risk being found in violation of probation simply because they are too poor to pay their fees.

Still, being found in violation of probation for failure to pay may not be the end of the story for low-income individuals. Under federal law, individuals who violate a term of their probation are ineligible for many federal welfare programs.[55] Already low-income individuals stand to lose access to Temporary Assistance to Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), low-income housing and housing assistance, and Supplemental Security Income (SSI) for the elderly and disabled.[56]

While some counties have listed violation, extension, and revocation of probation among the potential consequences for failure to pay probation fees, it is unclear how often this is used. Both San Francisco Chief Probation Officer Karen Fletcher[57] and former Alameda Chief Probation Officer David Muhammad said that their probation departments would not use these tactics for

failure to pay probation fees, alone.[58] However, with these rules on the books and the associated consequences severe, this should still be considered a top concern.

Severe Debt Collection Practices Serve as Additional Penalties

In addition to explicit failure to pay penalties, individuals with outstanding debt face incredibly punitive debt collection practices. Across the board, collection practices increase debt or compromise peoples' financial stability.

Debt Collection Practices are Punitive in and of Themselves

Common debt collection practices include:

- Wage garnishment and a $10 per paycheck wage garnishment fee;
- Liens on property;
- Seizure and sale of personal property;
- Tax refund intercept;
- Civil assessment; and
- Referral to a debt collector.

Current penalties, debt collection practices, and the associated consequences all ignore the fact that 80 percent of California defendants are indigent.[59] Rather than willfully refusing to pay, the majority of people on probation are simply unable to. By merely exacerbating the economic insecurity of a population that is already overwhelmingly poor,[60] these policies fail to encourage debt repayment, but instead, create a cycle of debt and punishment.

Faced with a growing probation population and no way to cover exploding costs, California naïvely turned to probation fees. After nearly four decades since the state authorized the use of probation fees, it is clear that probation fees are failing on all fronts. Not only are they failing to raise revenue for probation departments, but they punish the poor for being poor. While a lack of statewide data has hidden this failure until now, California can no longer ignore the cost of probation fees.

Recommendations

Given the concerning revelations that probation fees fail to support county budgets and, more importantly, that they have had profound consequences for an already vulnerable population, the practice of charging probation fees requires immediate reform.

A series of policy alternatives were evaluated across four criteria (distributional impact, budget, operational feasibility, and political feasibility).[8] Based on these criteria, the solution is clear: California must end the harmful practice of probation fees and provide relief to those who have already suffered because of them.

Policymakers should: (1) amend the Penal Code to abolish probation fees statewide, and (2) eliminate existing debt by making probation fee debt unenforceable and uncollectable.

Recommendation 1: Eliminate Probation Fees

The inefficient and harmful effects of probation fees show that they are fundamentally flawed. Instead of throwing good money after bad trying to fix an irreparable practice, the best policy for counties and people on probation is to eliminate the use of probation fees. Abolition can be achieved by amending Penal Code Section 1203.1b, and additional relevant penal codes[9] to end county-authorization to collect fees to cover the costs of probation.

Fee elimination was evaluated along with three additional policy alternatives including allowing probation fees to worked off through community service, strengthening ability to pay procedures, and eliminating poverty penalties for failure to pay.[10] Across the board, fee elimination best served the needs of counties and individuals on probation.

Distributional Impact: Eliminating fees eliminates the opportunity for unequal treatment

High levels of debt, failure to consider ability to pay, and steep penalties have led to the unjust treatment of many people on probation. Eliminating probation fees standardizes treatment across the state and ensures that revenue generating motives do not drive county and probation department behavior. Each policy expert consulted agreed that removing fees all-together was the best way to end the injustice of probation fees.

Budget: High payoff for people on probation with little cost to counties

Former Alameda Chief Probation Officer David Muhammad believed that total elimiation of probation fees would be financially viable for the overwhelming majority of counties – and the budget data backs him up.[61] Results from the Public Records Act requests show that probation

[8] Further explanation of these criteria can be found in Appendix I.
[9] County-charged probation fees and the associated penal codes are enumerated in Appendix E.
[10] Policy evaluation for the additional three policy alternatives can be found in Appendix J.

fees account for little if any probation department revenue. Given the profound inefficiency of probation fees, elimination is unlikely to do any harm to counties' finances and could improve probation and county budgets by eliminating the costs of administrating and collecting fees.

Operational Feasibility: Fee elimination will create capacity among strained departments

Eliminating probation fees provides probation departments the opportunity to refocus on core goals. As probation plays an increasingly significant role in the criminal justice system, it needs to focus on core service components. Currently, probation departments are responsible for assessing and collecting probation fees – a duty directly at odds with their primary role of ensuring rehabilitation and public safety.[62] Eliminating probation fees will not create additional administrative requirements to probation departments and, more importantly, it will remove existing operational barriers to achieving their mission.

While no state has eliminated probation fees, states that have abolished other criminal justice fees have done so partially to address the burden of fee collection. For example, Virginia successfully eliminated its parole fee in 1994. The belief among corrections staff was that collections blurred the traditional responsibilities of the criminal justice system and was an unnecessary burden.[63] Facing the same difficulties, California has the opportunity to relieve some of the pressure on probation by eliminating the duty of fee assessment and collection.

Political Feasibility: With support from probation professionals, California can lead reform

Significant political will among probation professionals and recent reform efforts suggest that legislative victory is possible. All signs point to a shift in the use of criminal justice fees, and with no states having yet eliminated probation fees, California has the opportunity to lead the nation in critical reform.

Even with significant political support, there will undoubtedly be some opposition. Some counties, evidence to the contrary, may believe that elimination will negatively impact their budgets. Meanwhile, private debt collection, drug testing, and electronic monitoring companies stand to lose out on contracts across the state. Much of this opposition can be overcome with the evidence discovered through the Public Records Act responses and from the robust support from probation professionals and seeing the initial successes of similar policies.

Political Will Exists Among California's Probation Professionals

Those in California's probation system are increasingly calling for probation fee elimination, reinforcing the importance of this policy and signaling likely political success. In August 2017, the Harvard Kennedy School Malcolm Weiner Center for Social Policy released a "Statement on the Future of Community Corrections," which called for "eliminating or significantly curtailing charging supervision fees."[64] Five current California Chief Probation Officers signed on in support. Signatories included San Francisco Chief Probation Officer Karen Fletcher, San Diego Chief Probation Officer Adolfo Gonzalez, Sonoma Chief Probation Officer David Koch, Los Angeles Chief Probation Officer Terri McDonald, and Alameda Chief Probation Officer Wendy Still. Former Alameda Chief Probation Officer David Muhammad was also a signatory. When asked if many

counties would resist the elimination of these fees, Muhammad said that because counties are bringing in such little revenue, he suspected that resistance would be limited.[65]

Local and National Policy Proposals Hint that the Tide is Turning on Probation Fees

Recent movement by San Francisco County to reform probation fees as well as broader action on criminal justice fees shows that reform is possible.

On February 6, 2018, San Francisco Board of Supervisors President London Breed introduced an ordinance with support from the City and County's treasurer, public defender, and district attorney to eliminate probation and other county criminal justice fees.[66] The ordinance, if passed, would amend the Administrative Code "to abolish fees associated with probation costs."[67] Building on this momentum, the same day that President Breed introduced her legislation, San Francisco Sheriff Vicki Hennessy announced her department would no longer charge people fees for electronic monitoring and community service.[68] As of the publication of this report, London Breed's bill has yet to be voted on but is expected to pass with strong support.

Additionally, a 2017 UC Berkeley report highlighting the racial and economic injustice as well as the budgetary inefficiency of juvenile fees spurred swift reform from the state legislature.[69] That same year, legislation ending the assessment of fees on families of youth in California's juvenile justice system became law.[70]

While California would be the first state in the nation to abolish probation fees, parole fee reform in Virginia shows it can be done successfully. In 1994, the state of Virginia abolished parole supervision fees ($30), which functioned in the same way as probation supervision fees.[71] In addition to the inherent injustice of fees, corrections staff were motivated to do away with it because collection was "too burdensome relative to the small amount of revenue generated by the fee."[72]

Success in California on juvenile fees and in Virginia on parole fees show that abolition can be done successfully and without any other states leading the charge on probation fee reform, California has the opportunity to, once again, be a national leader on progressive reform.

Recommendation 2: Clear Exiting Probation Fee Debt

This who are currently struggling with probation fee debt cannot be left behind. Having come to the conclusion that the best way forward is to eliminate probation fees, policymakers should clear existing debt for those currently and formerly on probation. This can be achieved by making debt from probation fees unenforceable and uncollectable.[11]

Distributional Impact: Immediate relief for those facing the burden of unjust debt

By making all probation fee debt unenforceable and uncollectable, California can ensure that all people who need assistance, receive it. Often when applications or other processes that require action on the part of the individual are used, low-income people with fewer resources and less time find themselves unaware or unable to take advantage of relief being offered. The immediate and universal elimination of existing debt will ensure those who are most in need of debt-forgiveness, receive it.

Budget and Operational Feasibility: Small initial investment will relieve large debt burden

Eliminating outstanding is unlikely to result in significant losses for counties. Limited data from Kern, Mendocino, and Sacramento counties' Public Records Act responses suggest that while outstanding debt is substantial, little is being actively collected. While on paper it may look like counties are losing out on millions of dollars in potential revenue, actual losses are likely minimal.

Additionally, clearing debt will require minimal administration and associated costs to alert people of their updated debt status. This is a small initial investment, but would not be an ongoing cost.

Political Feasibility: California Juvenile Justice Fee Reform Served as a Test Case

The most significant barrier to clearing debt for those who have already been impacted by probation fees is political viability. The 2017 bill to eliminate juvenile fees, which was successfully signed into law, initially included a provision to wipe out existing debt. This provision, however, was ultimately removed from the final version. While this does not preclude a similar provision from being successful in probation fee reform legislation, it is indicative of potential political obstacles.

Failure to look at the costs and consequences of probation fees over the last forty years has allowed this policy to become the statewide norm. California now has the opportunity to ensure no person is subjected to unjust probation fees and to repair some of the damage that has already been done.

[11] Language from California the juvenile fee bill, Senate Bill 941 (the predecessor SB 190), can be used as a model for how to eliminate existing debt. "*On and after [Date], the balance of any court-ordered costs imposed pursuant [Relevant Statutes], shall be unenforceable and uncollectable, and, on [Date], the portion of the judgment imposing those costs shall be vacated.*"

Conclusion

While the intention behind probation fees has always been to make money, the justification has been that those who "benefit from" or "use" the system should pay to operate it. The reality, however, is that probation is not designed to benefit those in the system.

While probation fees have been billed as "user fees," probation is intended to be a public good – used by all. In fact, an analysis of probation department mission statements shows that supporting the public good is *the* guiding principles for probation. Of the 54 county probation departments with mission statements, all but one named promoting the community or public good, and 75 percent listed it as the very first principle.[73] If society as a whole is intended to benefit from probation's existence, then the collective should share the costs rather than place the burden solely on those on probation.

Moreover, pretending that people on probation are the sole beneficiaries or that they benefit at all from their supervision status ignores the inherent biases and collateral consequences of the criminal justice system. The aggressive and systematic targeting of people of color throughout the "tough on crime" era is responsible for their disproportionate representation in the criminal justice system, today. Adding insult to injury, this increased contact with the criminal justice system is associated with declining employment prospects and future earnings, financial insecurity, housing instability, and – of course – higher debt.[74] Asking those who have been unjustly targeted and impacted by the criminal justice system to bear the additional burden of funding it, is cruel.

California is beginning to turn away from the "tough on crime" policies of the past, Realignment being a significant indication of this change. But much work remains to ensure equitability in the criminal justice system. While further examination could illuminate how truly widespread the practices of high fees assessed without ability to pay assessments or cost-effective collections are, the limited information secured through this study suggest that local and state officials need not wait any further to end the unjust practice of charging probation fees.

Appendix

Appendix A: Glossary of Terms

Fees	Itemized payments for court activities, supervision, or incarceration charged to defendants determined guilty of infractions, misdemeanors, or felonies. Fee collections are intended to support operational costs in the criminal justice system. Fees may also have a punitive and deterrent purpose, but are not designed to cater to specific offense categories.[75]
Fines	Monetary punishments for infractions, misdemeanors, or felonies. Fines are intended to deter crime, punish offenders, and compensate victims for losses.[76]
Franchise Tax Board	The California Franchise Tax Board collects state personal income tax and corporate income tax of California.
Jail	Jails are locally operated short-term facilities that hold inmates awaiting trial or sentencing or both, and inmates sentenced to a term of less than one year, typically misdemeanors.[77]
Parole	Refers to criminal offenders who are conditionally released from prison to serve the remaining portion of their sentence in the community.[78]
Post-Release Community Supervision	Under Public Safety Realignment (AB 109), a non-violent, non-serious, or non-high-risk sex crimes offender who has been released from state prison into Post Release Community Supervision (PCRS) and who would have previously been placed under parole supervision are now supervised by probation. PRCS can last for up to 3 years but can end earlier if the offender does not violate terms of supervision resulting in a return to custody.[79]
Prison	Prisons are longer-term facilities run by the state that typically hold felons and persons with sentences of more than one year.[80]
Probation	Probation refers to adult offenders whom courts place on supervision in the community through a probation agency, generally in lieu of incarceration. Probationers can have a number of different supervision statuses, including active supervision, which means they are required to regularly report to a probation authority in person, by mail, or by telephone. Some probationers may be on an inactive status, which

means they are excluded from regularly reporting, and that could be due to a number of reasons. In many instances, while on probation, offenders are required to fulfill certain conditions of their supervision (e.g., payment of fines, fees or court costs, participation in treatment programs) and adhere to specific rules of conduct while in the community.[81]

Probation Revocation

When a probation/post-release offender violates his/her conditions of probation/community supervision, the grant of probation may be revoked or terminated and the sentence imposed.

Public Safety Realignment

California's Public Safety Realignment (PSR) policy responded to a US Supreme Court mandate to reduce prison overcrowding. The policy took effect on October 1, 2011. PSR is designed to reduce the prison population through normal attrition of the existing population through normal attrition of the existing population while placing new offenders not convicted of violent, serious, or sexual offenses under county jurisdiction for incarceration in local jail facilities rather than state prisons. Under the PSR, offenders not convicted of violent, serious, or sexual offenses who are service time in state prisons become eligible for post-release community supervision (PRCS) rather than the traditional state parole. Some new offenders receive a straight sentence to county jail, while other new offenders' sentences include a term of mandatory supervision (MS) in the community following release from incarceration. Both the PRCS and MS populations fall within the BJS definition of parole, which includes post-custody conditional supervision.[82]

Restitution

Payment by an offender to the victim for the harm of the offender's wrongful acts.[83]

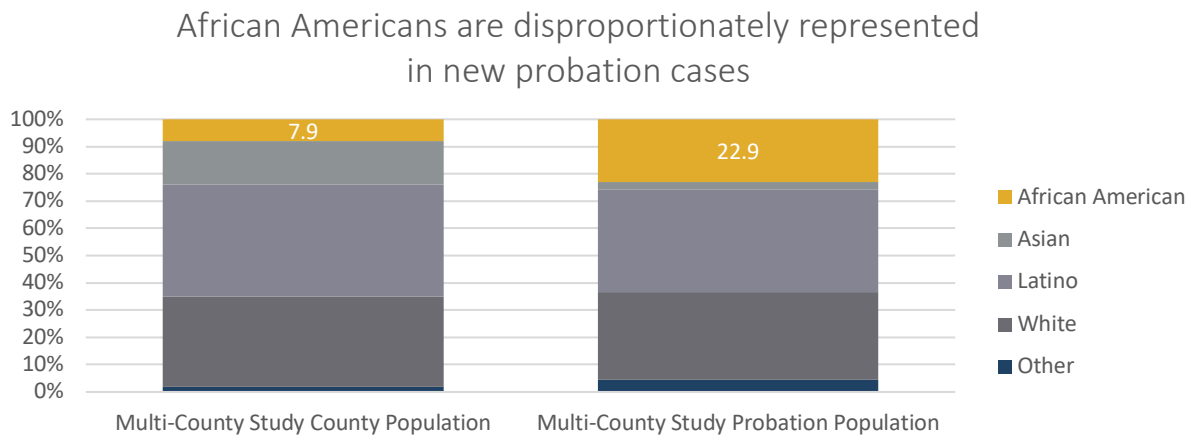
Appendix B: A Demographic Profile of Probation in California

Research across California and the country show that low-income, men of color are systematically overrepresented in the criminal justice system. Data for those specifically on probation at the state level, however, is limited.

California does not collect state-wide data on probationer demographics. As a result, little is known about the majority of the people in the state's criminal justice system. While demographic data was included the Public Records Act request, only about half of responding counties sent this information. Moreover, the data that was turned over varied greatly in terms of what, how, and over which years it was measured. Given the time constraints under which this report was produced, there was not enough time to accurately compile this data into meaningful statistics about California probation demographics.

The most recent and complete data on probation demographics comes from a joint 2015 Public Policy Institute of California (PPIC), Board of State and Community Corrections (BSCC) multi-county study,[84] which examined a group of 12 counties representative of the state.

As is the case throughout the criminal justice system, black men were disproportionately represented. The vast majority, nearly 80 percent, of individuals starting probation during the study were male.[85] Additionally, African Americans were overrepresented among the probation population. Despite making up only 7.9 percent of the population in the observed counties, African Americans made up 22.9 percent of new probation cases between 2011 and 2015.[86] In contrast, Asians were underrepresented and the shares of Latinos and whites in the probation population were comparable to their share of the population.[87]



Appendix C: Methodology Continued

In addition to the methodology laid out in the report, this appendix includes:

- A list of county probation departments that responded to the Public Records Act request;
- Statistical testing for responding counties to confirm demographic representativeness;
- A sample of the Public Records Act requests sent to probation departments; and
- Interview questions for conversations with people formerly on probation.

County Response Status to the Probation Department Public Records Act Request

County	Responding
Alameda	•
Alpine	
Amador	•
Butte	•
Calaveras	•
Colusa	
Contra Costa	•
Del Norte	
El Dorado	•
Fresno	
Glenn	•
Humboldt	•
Imperial	•
Inyo	•
Kern	•
Kings	•
Lake	•
Lassen	•
Los Angeles	•
Madera	•
Marin	•
Mariposa	•
Mendocino	•
Merced	•
Modoc	
Mono	•
Monterey	•
Napa	•
Nevada	•

County	Responding
Orange	•
Placer	•
Plumas	•
Riverside	•
Sacramento	•
San Benito	•
San Bernardino	•
San Diego	•
San Francisco	•
San Joaquin	•
San Luis Obispo	•
San Mateo	•
Santa Barbara	•
Santa Clara	•
Santa Cruz	•
Shasta	•
Sierra	
Siskiyou	
Solano	•
Sonoma	
Stanislaus	
Sutter	•
Tehama	•
Trinity	•
Tulare	•
Tuolumne	
Ventura	
Yolo	•
Yuba	•

Statistical Testing of the Demographic Representativeness of PRA-Responding Counties

Given there was not a 100 percent response rate to the Public Records Act requests sent to California probation departments, a series of one sample T-tests were conducted to compare the demographics of responding counties to California as a whole to gauge representativeness. Responding counties were compared to the state of California on measures of sex, race, education, languages spoken, income, and poverty levels. The data used to conduct these tests were from the 2016 US Census Bureau QuickFacts.[88]

For the T-tests, the stated null hypothesis is that the average for responding counties for each measure is equal to the average for the state of California. At the 5 percent significance level, the null hypothesis cannot be rejected across all measures. As such, it can be concluded that the responding counties are statistically similar to the state.

Comparing California and PRA Responding Counties			
Variable	**California**	**Responding County Mean (n=46)**	**P-Value**
Female persons, percent	50.30%	50.32%	0.9640
White alone, not Hispanic or Latino, percent	37.70%	37.14%	0.8793
Black or African American alone, percent	6.50%	6.73%	0.7222
American Indian and Alaska Native alone, percent	1.70%	1.61%	0.7827
Asian alone, percent	14.80%	15.4%	0.6941
Two or More Races, alone	3.80%	3.85%	0.7293
Hispanic or Latino, percent	38.90%	38.61%	0.9202
Language other than English spoken at home, percent of persons age 5+	44.00%	44.54%	0.8577
High School graduate or higher, percent of persons age 25+	82.10%	82.08%	0.9859
Bachelor's degree or higher, percent of persons age 25+	32.00%	32.19%	0.9210
Median household income	$63,783	$65,878.05	0.4312
Per capita income in past 12 months	$31,458	$31,783.06	0.8278
Persons in poverty, percent	14.30%	14.23%	0.9182

Sample Public Records Acts Request Letter to County Probation Department

To Whom It May Concern:

I am writing pursuant to the California Public Information Act (Government Code Section 6250 et seq.) to request the public records described below. For the purposes of this request, "public records" include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Per California Government Code § 6253(c) you must, within 10 days of receipt of this request, respond and let me know the status of the request, and how soon you will be able to produce all available records.

I am writing on behalf of the Los Angeles Regional Reentry Partnership, Rise Together Bay Area, and Root & Rebound. I am requesting records relating to the determination and collection of probation fines and fees imposed by the _____ County Probation Department (hereinafter "Department"). Unless otherwise stated, I request the records below from the ***previous five years***.

Definition of Terms Used in this Request

"Probation fines and fees" includes any fines or fees, other than restitution fees, imposed or charged in connection with participation in probation, including but not limited to probation registration fees, processing fees, administrative fees, supervision and monitoring fees, and fees for drug testing.

Requested Records

1. **Number of Probationers:** All documents reflecting the total number of people on probation annually for both formal and informal probation and for what offenses they are on probation.

2. **Probation Sentence Length:** All documents reflecting the average, minimum, and maximum probation lengths by offense type and level (misdemeanor or felony).

3. **Demographics of Probationers:** All documents relating to the demographics of probationers including but not limited to age, sex, race, education status, and income level.

4. **Determination of Probation Department Fees:** All documents describing all fines associated with probation as well as Department administrative and processing fees associated with supervision, conditions of probation, and paying probation fines and fees, including:
    a. Training materials, resources, and guides (such as fee schedules) for staff regarding the imposition of fees against a probationer;
    b. Drug testing requirements for probation and associated fees; and
    c. The use of release cards.

5. **Notification of Probation Fees Owed:** All documents reflecting policies and practices for informing the probationer of the total amount owed in fines and fees and how to pay them.

6. **Probation Fee Collection Policy and Practice:** All documents relating to the collection of probation fees, including:
    a. Policy collection guidelines and/or regulations regarding referrals to other departments like the Franchise Tax Board;
    b. Total amounts assessed, collected and outstanding;
    c. Length of outstanding debt over time (for example by year, month, type and/or amount of fee).

7. **Ability to Pay:** All documents reflecting:
    a. Policies and procedures for determining ability to pay; and
    b. The number of probationers that had the amount of probation fines and fees reduced and/or a payment plan established due to their inability to pay.

8. **Non-Payment Policies** All documents reflecting the penalties for failing to pay probation fines and fees including but not limited to incarceration, driver's license suspension, and additional fines.

9. **Cost of Collection:** All documents reflecting the approximate cost to the county of collecting and processing probation fees.

10. **Collection of Interest:** All documents reflecting the Department's policies and practices regarding charging interest on probation fees, including:
    a. How interest rates are set;
    b. Circumstances under which interest is imposed and collected;
    c. A historical record of interest rates applied; and
    d. The annual monetary amount of interest charged, collected, and expected to be collected, including budgets.

11. **Third-Party Service Provision:** All documents reflecting third-party service provision related to probation (for example electronic monitoring, drug testing, etc.), including contracts, bids for contracts, agreements, and communications related to services for which probation fees assessed.

12. **Debt Collection Vendors:** All documents including but not limited to contracts, meeting minutes, and memoranda relating to debt collection including:
    a. Policies and practices regarding the transfer of probation fees to collection vendors;
    b. The number of probation accounts transferred to collection vendors annually.

13. **Fee Tracking and Record Keeping:** All documents related to the Department's system of recordkeeping and tracking of probation fines and fees, including any records reflecting any problems with the accuracy of the recordkeeping, tracking, or collection procedures—such documents include but are not limited to reports and memoranda.

14. **Interaction with the Chief Probation Officers of California:** All communications with the Chief Probation Officers of California regarding probation fees including but not limited to surveys.

We have attempted to be as specific as possible in designating the public records we wish to obtain. If you find that our request is unclear of insufficiently focused, we request that you provide us with the assistance required Government Code Section 6250 et seq., including "assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated" and providing "suggestions for overcoming any practical basis for denying access to the records or information sought."

Because the Western Center on Law and Poverty is a nonprofit organization as are the organizations on behalf of whom this request is being submitted, we request that you waive any fees that would normally be applicable to this request. *See North County Parents Organization v. Department of Education*, 23 Cal. App. 4th 144 (1994). If you are unable to do so, please notify us before incurring any costs.

Where possible, please send your response in electronic format, as required by Government Code Section 6250 et seq. via electronic mail.

Finally, as you know, Government Code Section 6250 et seq. requires a response within 10 calendar days of receipt of this request. I ask that you please send the materials responsive to this request as they become available. For example, if the material responsive to one request is ready, but the Department will need significantly more time to gather materials on other questions, please forward what is ready as soon as possible. Also, if a portion of the material is confidential, please send me the non-confidential portions of the material.

Interview Questions with People Formerly on Probation

Below is a list of topic questions that guided interviews with people formerly on probation.

The interviewer, Tara Gamboa-Eastman, completed the National Institute of Health's Protecting Human Research Participants course ahead of all interviews with people formerly on probation. These questions were reviewed and approved by the Committee on the Use of Human Subjects, a University-Area Institutional Review Board at Harvard.

1. In which county were you on probation?
2. When were you on probation? What year to what year?
3. Were you on probation for a drug related offense? Were drugs and alcohol at all a consideration by the judge in determining your prison or probation sentences?
4. Would you mind telling me for what offense you were on probation?
5. Do you remember what types of fines and fees you paid?
6. How were you notified of the fees you had to pay?
7. Did you receive an ability to pay assessment? If so, what was the result (i.e., payment plan)?
8. How did you pay? In the probation office, via mail, online, varied? Via check, credit card, cash?
9. Were you charged a service fee when you made a payment?
10. Did you have to pay upfront (before a report, ahead of supervision for a month, for a drug test, etc.)? If so, what happened if you didn't pay?
11. Did you ever miss a payment? What happened?
12. Were you unable to fulfill a requirement of probation because you weren't able to pay for it?
    a. What happened?
13. Do you know if you could be found in violation of probation for missing a payment or subsequently missing a condition of probation?
14. Were you required to take regular drug tests?
    a. Who decided this?
    b. Did you have to pay for the drug tests?
    c. How did you pay for the drug test?
    d. When did you pay? Before a test, with a regular bill?
    e. Who did you pay? Probation department, private company, other?
    f. What happened if you didn't pay for a test? Were you allowed to take the test?
    g. Who administered the test? Probation? Private company?
    h. Where did you take the test? Probation? Other?

Appendix D: Cost of Collections by County

Cost of Collections for All Responding Counties	
County	Cost of Collections
Alameda *(Avg. FY 12/13, 13/14)*	$14,528
Glenn *(FY 15/16)*	$264,379
Los Angeles *(FY 16/17)*	$3,999,000
Mendocino *(Avg. FY 13/14 – 16/17)*	$35,300
Sacramento *(FY 16/17)*	$1,818,671
Santa Clara *(Avg. FY 13/14 – 16/17)*	$2,715,291
Shasta *(Avg. FY 12/13 – 16/17)*	$48,959

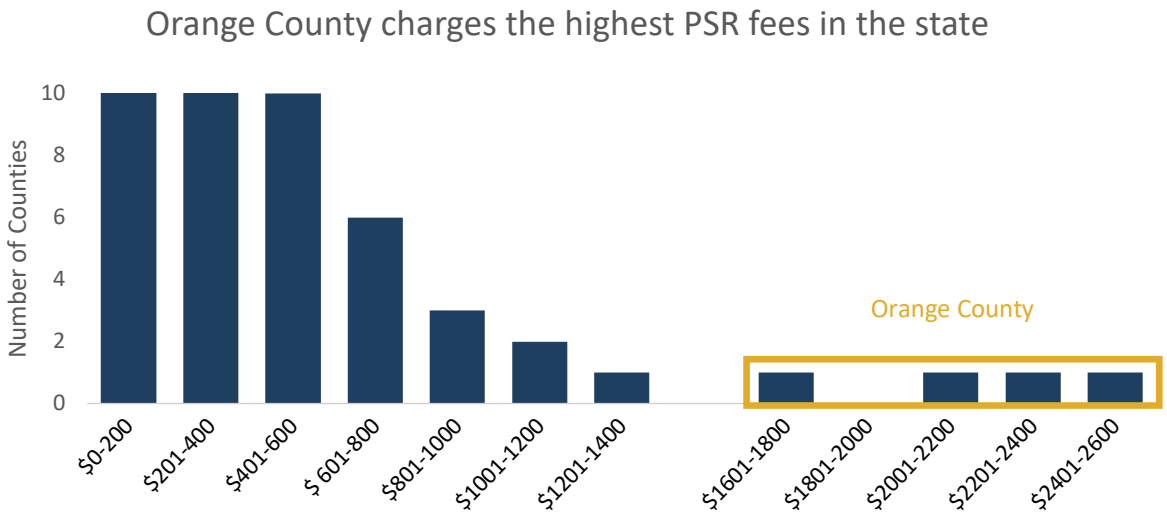
Appendix E: Probation Fees Identified via the PRA Request

While dozens of fees were discovered through the Public Records Act request, many were broader criminal justice fines and fees that were simply being collected by the probation department or were being charged to a person on probation but were not specifically related to the conditions of probation.

Probation Fees Discovered through the Public Records Act Request					
Fee	**Authorizing Code** *(As reported by counties in PRA responses)*	**Average**	**Median**	**Range**	**Number of Counties Charging Fee**
Administration Fee *(One time)*	PC 1203.1(b)(h) PC 1205(e) PC 1205d GC 129550(c)	$37	$35	$10 - $75	6
Change of Plea/ Setting Aside Verdict Fee *(Per request)*	PC 1203.4(d)	$102.50	$100	$60 - $150	4
Collection Fee Installment Payment Fee *(One time)*	PC1203.1b PC 1203.1(b)(h) PC 1205 PC 1205b	$47	$50	$25 - $75	11
Collection Fee Non-Installment Payment Fee *(One time)*	PC 1203.1(b)(h) PC 1205(e) PC 1205 PC 1205(d)	$34	$30	$0 - $75	6
Community Service Administration Fees *(One time)*	PC 1203.1(g) PC 1203.1b PC 1208.2(b)(1)	$95	$50	$10 - $306	6
Deferred Entry of Judgment Services Fee *(One time)*	PC 1001.15 PC 1001.16	$343	$300	$200 - $500	3
Drug/Alcohol Test Fee *(Per test)*	PC 1203.1ab PC 1203.1b PC 1463.14(a) PC 1203.016(g)	$19.55	$20	$5 - $50	21
Drug Program Fee *(Per count)*	HS 11372.2 HS 11372.7 PC 1210.1(a)	$219	$150	$570	7
Electronic Monitoring Fee *(Per Day)*	PC 1203.015(a) PC 1203.1016(g) PC 12010.15 PC 12010.16 PC 12010.17 PC 1208.2(b)(1) PC 1208.2	$11	$10	$2 - $35	16

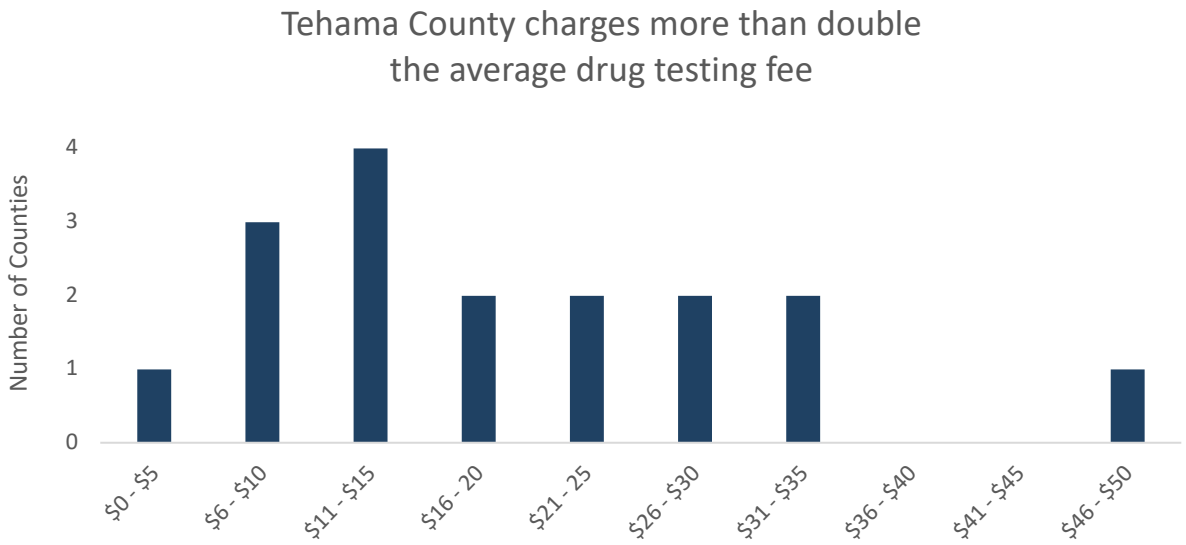
	PC 1203.016 PC 1203.1b(h) PC 1203.016(g) PC 1203.016				
Electronic Monitoring Administration Fee *(One Time)*	PC 1208.2(b)(1) PC 1208.2(b) PC 1203.016(g)	$52	$40	$10 - $125	8
Interstate Compact Application Fee *(Per application/case)*	PC 1203.1b PC 1203(i) PC 1203.1b(a) PC 11175 PC 11179 PC 1203.9 PC 1203.d	$235	$245	$0 - $513	12
Jurisdictional Transfer Fee *(Per Report/Application/One Time)*	PC 1203.9 PC 1203.1b PC 1203.9(d)	$191	$148	$0 - $600	12
Pre-sentence Investigation/Report FEe *(Per Report)*	PC 1203.1b PC 1203.1b(a) PC 1203.1	$597	$450	$25 - $2,662	27
Probation Revocation Fine *(One time, upon revocation)*	PC 1202.44	$175	$150	$100 - $300	5
Restitution Fee – Percent of Restitution *(One time)*	GC 13967 PC 1203.1(l) PC 1202.4(1) PC 1101.9 PC 1202.3l	13%	13%	10% - 15%	9
Restitution Fee – Flat Fee *(One time)*		$499.53	$297.65	$100 - $1,000	3
Returned Check Fee *(Per check)*	Civ. Code1719(a)(1) GC 6157(b) GC 6157	$29	$30	$18 - $36	5
Sealing of Records Fee *(Per application)*	WIC 903.3(a) PC 1203.45 PC1203.4 PC 1203.45(g)	$92	$120	$0 - $150	4
Supervision Fee *(Per month)*	PC 1203.1b	$64	$50	$16 - $223	33
Supplemental Report Fee *(Per report)*	PC 1203.1b	$360.71	$286	$150 - $600	6
Work Program Administration Fee *(One time)*	PC 1208.2(b)(1) PC 4023.3a	$51	$60	$10 - $75	4
Work Program Daily Fee *(Per day)*	PC 1208.2(b)(1) PC 4034.2a	$12	$12	$10 - $15	3

Appendix F: Pre-Sentence Investigation Report Fee Distribution



Orange County's Tiered PSR Fee System, the Highest in the State	
Fee Description	**Fee Amount**
Cost of Conducting and Preparing Presentence Misdemeanor Investigation Reports	$1,697.36
Cost of Conducting and Preparing Presentence Felony Investigation Reports	$2,662.17
Cost of Conducting and Preparing Pre-Plea Misdemeanor Investigation Reports	$2,06.72
Cost of Conducting and Preparing Pre-Plea Felony Investigation Reports	$2,300.93

Appendix G: Drug Testing Fee Distribution



Appendix H: Fees Designed to Punish the Poor (Tables)

Non-Installment versus Installment Collection Fees		
County	**Collection Fee (Non-Installment)**	**Collection Fee (Installment)***
Humboldt	$30	$75
Kern	$30	$35
San Luis Obispo	$30	$75
Mendocino	$75	$50

*Per Penal Code 1203.1b, counties may charge up to but not more than $75 for installment collections.

Insufficient Funds and Returned Check Fees	
County	**Fee Amount**
Placer	$63
El Dorado	$25 (First Time), $35 (Subsequent Times)
Sutter	$35.70
Marin	$25
Trinity	$35
Tulare	$18

Appendix I: Policy Evaluation Criteria

Policy alternatives were evaluated across four criteria including distributional impact, budget, operational feasibility, and political feasibility. Each criterion is weighted by a percentage based on its relative importance.

Distributional Impact

The primary goal of any policy recommendation must be to address the racial and economic injustices that are present under the current probation fees scheme. Therefore, each policy alternative will be evaluated by its potential to reduce inequalities created by probation fees. This criterion is weighted most heavily (50 percent).

Budget

This criterion considers the impact on county and probation department budgets. It is weighted significantly (20 percent), acknowledging that part of the motivation behind probation fee stems from systemic and persistent underfunding. Neither probation departments nor any part of the criminal justice system should be rewarded with more money for "tough on crime" policies that are responsible for the wrongful targeting of people of color, which stretched limited resources. However, the reality is that underfunding makes it difficult for probation officers to do their jobs, including incorporating best practices that are more rehabilitative and less punitive.

Operational Feasibility

Operational feasibility assesses how easy or difficult any given policy will be to implement effectively and successfully. Operational feasibility is weighted significantly (20 percent) because if a policy cannot be implemented than the status quo will continue, undermining the ultimate goal of achieving justice for low-income people of color who have been disproportionately impacted by probation fees.

Political Feasibility

Political feasibility considers the likelihood of alternatives successfully passing through the California State Legislature and being signed into law. This considers both political will as well as potential roadblocks. Political feasibility is weighted the lowest (10 percent) because, while it is necessary for any policy recommendation to make it through the legislature in order to be successful, politics should not be the primary determinant of good policy.

Appendix J: Policy Recommendation Alternatives and Evaluation

For the primary policy recommendation of how to correct the practice of probation fees, four policy alternatives were considered: (1) abolishing probation fees, (2) allowing people to work off probation fees through community service, (3) strengthening ability to pay provisions, and (4) eliminating poverty penalties for failure to pay. These four alternatives were chosen based on the recommendations advanced in the prevailing literature on criminal justice fine and fee reform. Each policy alternative was rated either high, medium-high, medium-low, or low in terms of meeting each criterion laid out in Appendix I.

Below is a matrix directly comparing all four policies and a qualitative analysis for each of the additional three policy alternatives.

Probation Fee Abolition – best policy to meet stated criteria				
	Option 1: Eliminate Probation Fees	**Option 2:** Expanding Community Service	**Option 3:** Strengthening Ability to Pay	**Option 4:** Eliminate Failure to Pay Penalties
Distributional Impact (50%)				
Budget (20%)				
Operational Feasibility (20%)				
Political Feasibility (10%)				

Option 2: Community Service

Under current state law, only certain criminal justice fines may be converted into community service hours.[89] One policy to address the inefficiencies and injustices in charging probation fees could be to expand the community service alternative to include probation fees. However, community service falls short of equalizing the probation fee scheme and is neither financially nor operationally feasibility and is, thus, an unviable alternative.

Distributional Impact: Low

While on the surface community service may appear to be a fair way to address the inequitable impact of probation fees, they are far less just than they seem. First, there are often fees for participating in community service programs. Based on data from the Public Records Act requests, community service fees range from $10 to more than $300, adding to the problem of administrative fees rather than solving them.

More to the point, community service only shifts the burden of probation fees from one of finance to one of labor. For example, in Napa County people can earn $54 towards their debt per 8-hour day of community service – or, put another way, $6.75 per hour. This rate is far below California's minimum wage of $10.50[90] and even below the federal minimum wage of $7.25.[91] Working off thousands of dollars of debt at a rate below minimum wage would take an unreasonable amount of time that few low-income people could afford to devote.

Additionally, community service can be a difficult or impossible alternative for people who are disabled, in recovery programs, have caregiving responsibilities, or do not have money for transportation to the community service site.[92] While it may be a viable option for some low-income people, for many others, it only creates additional barriers to justice.

Budget: Medium-Low

Scaling existing community service programs to accommodate all individuals unable to pay their fees will require significantly more program administration, oversight, and funding.

Operational Feasibility: Low

Expanding community service to the level necessary to provide relief to all low-income people on probation who need it, would create an immense operational burden for probation departments. It would require considerably more administration and oversight, including significantly more probation officer staff time. With the constant struggles for staffing, resources, and capacity among probation departments as well as the increased burden of Realignment, community service is highly operationally infeasible.

Political Feasibility: Medium-High

Community service is politically feasible. It advances the same idea that the those in the criminal justice system should pay their debt to society – if they cannot do so financially then they can substitute their labor. While the idea behind community service would likely be quite popular, there would also be likely opposition from county governments and probation departments who would fear lower revenue and the burden of program implementation.

Option 3: Ability to Pay

California could clarify and strengthen ability to pay guidelines, amending Penal Code 1203.1b and other relevant statutes to ensure screening evaluates true financial ability.[93] While a strong alternative, if it can be implemented, strengthening ability to pay is highly operationally infeasible. The consensus among experts is that conducting ability to pay determinations as they should be, would cost so much time and money as to defeat the purpose of probation fees.

Distributional Impact: High

If done such that all low-income individuals received appropriate ability to pay adjustments, this policy could have a profound impact on improving probation fee equitability. Tightening ability to pay proceedings could allow individuals who could not afford fees to receive reductions while requiring wealthy individuals to pay their debts. As former Alameda Chief Probation Officer David Muhammad pointed out, ideally wealthy people would be required to contribute financially.[94]

Budget: Low

Reaching the level of accuracy in ability to pay determinations to achieve enough protection for low-income individuals would require so much additional staff time and administration that probation fees would likely become even less profitable.[95] Conducting intensive and complete ability to pay determinations for all probationers would cost more than the current system, but also yield less revenue as fewer people would be required to pay. If ability to pay adjustments make probation fees less efficient, it undermines their entire purpose and cannot be justified.

Operational Feasibility: Low

The Public Records Act request suggest that ability to pay determinations are not happening as often as they should and, for a variety of reasons, probation departments are already stretched beyond their limits. Scaling up to accurately assess the financial ability of all people on probation would be highly infeasible given probation departments' capacity. Moreover, a key to operational feasibility is the ability to have the policy implemented effectively and successfully. Strengthening ability to pay provisions alone will maintain the perverse incentive for probation departments to prioritize revenue over individuals' best interest.[96] As probation departments continue to face budget shortages and increased responsibilities, they may feel tempted to rule that someone can pay even if they do not generate additional revenue. This reality compromises the operational feasibility of this policy.

Political Feasibility: Medium-High

Strengthening and clarifying ability to pay provisions would be politically viable. This legislation would be to ensure that the goals of existing laws are achieved. Both the San Francisco Chief Probation Officer Karen Fletcher and former Alameda Chief Probation Officer David Muhammad[97] thought this would be the ideal solution if it could be done successfully (although they were unconvinced that it would be fiscally or operationally feasible).

Additionally, Massachusetts Representative Joan Meschino recently introduced a bill to tighten ability to pay in the Massachusetts state legislature.[98] While it has yet to be voted on, the existence of this proposal speaks to the viability of similar legislation in California.

Option 4: Eliminate Poverty Penalties for Failure to Pay

California could eliminate "poverty penalties"[99] that impose additional costs on individuals who are unable to pay criminal justice debt all at once. These include payment fee plans, late fees, collection fees, and interest.[100] While eliminating poverty penalties may slightly reduce the debt burden of low-income people on probation, doing so would not address the underlying inequities or budgetary inefficiencies of probation fees. Essentially, eliminating poverty penalties would be an extension of the status quo.

Distributional Impact: Low

Eliminating poverty penalties would help reduce the impact of failure to pay. By not adding to people's debt when they cannot afford to pay their fees, eliminating these penalties would help interrupt the cycle of debt and punishment. However, the relief would be minimal. Low-income people would still face hundreds or, likely, thousands of dollars of probation fee debt and alternative penalties and debt collection practices would continue to unfairly target them.

Budget: Medium-Low

Removing poverty penalties would not cost money but would leave in place a policy that is financially inefficient. Without facing the financial reality of probation fees, state and county governments are unlikely to address the structural underfunding of probation departments.

Operational Feasibility: Medium-Low

This alternative would be easy to implement in that it would only require probation departments to stop a current practice. However, from probation departments' perspective, taking away their means for collecting probation fees curtails their ability to do their jobs (which, under this alternative, would include probation fee debt collection).

Political Feasibility: Medium-Low

As eliminating poverty penalties would by and large continue current policies, it would likely be challenging to build a coalition to move legislation forward. As it does not correct the underlying inequities of probation fees, eliminating poverty penalties fails to create the necessary change for many seeking to correct the unjust policy. Furthermore, while some probation professionals may approve of the change, others may be unsupportive seeing it as limiting their ability to do their jobs.

Endnotes

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[13] Petersilia, Joan. "Voices from the Field: How California Stakeholders View Public Safety Realignment." Realignment in Review. Stanford Law School, Stanford Criminal Justice Center, January 2014. https://www.ncjrs.gov/pdffiles1/nij/grants/247084.pdf.

[14] Petersilia, Joan, and Jessica Greenlick Snyder. "Looking Past the Hype: 10 Questions Everyone Should Ask About California's Prison Realignment," 2013. https://law.stanford.edu/index.php?webauth-document=child-page/183091/doc/slspublic/Joan%20and%20Jessica%20Issue%20Brief%20Cal%20J%20Politics%20April%202013.pdf.

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